

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Enrique Lombrana-Perez,)	Civil Action No.: 6:16-cv-1842-BHH
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
D.S. Wilkes, Nurse Vickor)	
)	
Defendants.)	
)	

This matter is before the Court upon Plaintiff Enrique Lombrana-Perez's *pro se* complaint filed pursuant to 42 U.S.C. § 1983. The complaint seeks damages for deliberate indifference to his serious medical needs, and excessive force (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina, this matter was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling. The matter is now before this Court for review of the Report and Recommendation ("Report") issued by the Magistrate Judge on March 9, 2017. (ECF No. 46.) In his Report, the Magistrate Judge recommends that the Court enter an entry of default judgment against Defendants D.S. Wilkes and Nurse Vickor for failure to defend this action pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. (ECF No. 46 at 3.) Neither Defendant nor Plaintiff has filed any Objections.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. §

636(b). In the absence of a timely filed Objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no clear error and agrees with the Magistrate Judge that Defendants have failed to defend this action pursuant to Rule 55(a). In the discussion section, the Magistrate Judge correctly directs the Clerk to enter an entry of default against Defendants. (ECF No. 46 at 3.) However, in the conclusion section, the Magistrate Judge recommends the Court direct the Clerk to enter an entry of default judgment. (*Id.*) The Court finds it is only proper at this point in the proceedings to enter an entry of default rather than a default judgment, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. Accordingly, at this time, the Clerk is directed only to file an entry of default.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

March 30, 2017
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.